The Odisha Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 428 CUTTACK, MONDAY, FEBRUARY 17, 2025/MAGHA 28, 1946

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 11st February 2025

S.R.O. No. 139/2025—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Award dated 13rd January, 2025 passed in the I.D. Case No. 14 of 2006 by the Presiding Officer, Industrial Tribunal, Rourkela to whom the industrial dispute between the Management of M/s Rourkela Steel Plant, Rourkela and Shri Subash Chandra Jamudalia, PL. No. 931324, Represented through Secretary, Rourkela Shramik Sangha, No. D-81, Sector 18, Rourkala-3 was referrd for adjudication is hereby published as in the schedule below :—

SCHEDULE

BEFORE THE INDUSTRIAL TRIBUNAL, ROURKELA

INDUSTRIAL DISPUTE CASE NO. 14 of 2006

Dated the 13th January, 2025

Present :

Shri Benudhar Patra, B.Sc., LL.M.,
Presiding Officer,
Industrial Tribunal,
Rourkela.

Between :

The Management of
M/s Rourkela Steel Plant,
Rourkela. . . First Party—Management

And

Shri Subash Chandra Jamudalia,
PL No. 931324,
Represented through Secretary,
Rourkela Shramik Sangha,
No. D-81, Sector -18,
Rourkela - 3. . . Second Party— workman

Appearances :

Shri Sanatan Biswal, Advocate	. .	For the First Party— Management
Shri N.K. Mohanty, President, Ispat Labour Union, Rourkela.	. .	For Second Party— Workman

AWARD

The Government of Odisha, Labour and Employment Department in exercise of their powers conferred by sub Section 5 of Section 12 read with Clause (d)of sub Section 1 of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') have referred the following dispute for adjudication vide their Order No. 1947/LE, Bhubaneswar, dated the19th June 2006.

> "Whether the removal from service of Shri S.C. Jamudalia.PL. No. 931324, Shunting Porter Yard switching Section of Traffic and Raw Materials Department of Rourkela Steel Plant by the Management with effect from the 12th October 1999 is legal and/ or justified ? If not, what relief Shri Jamudalia is entitled to ?"

2. The case of the 2nd party-workman, as it appears from his claim statement, is that he joined Rourkela Steel Plant in the year 1993 as a Semi-Skilled Worker (Trainee) and was posted in the Traffic & Raw Materials Department of the 1st party-management. It is alleged that during his training period, though he was allotted the job of Shunting Porter, yet he was asked to do the job of a permanent employee with payment of stipendiary amount. It is stated that while working as such, he met with accidents on two occasions; once on 6th August 1993 and again on 11st May 1994 and on recovery he continued to work under the first party after completion of his traineeship and on becoming a permanent worker, he submitted an appeal before the Chief Personnel Manager to transfer him from Traffic & Raw Materials Department to any other department of the management, but it was not heeded to. Thereafter, it is pleaded, in the year 1995, he was issued with a charge-sheet to which he submitted a representation through proper channel praying the A.G.M (T&RM) to supply him a copy of the Standing Order so as to enable him to submit his explanation to the charge sheet. But, his request was turned down with an intimation to the effect that " You are a worker and what do you do by knowing the Certified Standing Orders of Rourkela Steel Plant", According to the second party, Clause 41 of the Standing Orders stipulates that all employees of Rourkela Steel Plant should obtain a copy of the Standing Orders from the management and though it was the duty of the management to display the English, Hindi & Oriya version of Standing Orders at the main notice board and supply copies thereof to the workmen free of cost, yet the managements have neither displayed the same anywhere nor supplied a copy thereof the 2nd party-workman despite demand. Further it has been alleged that one of the conditions of the employment being that the management shall provide free medical treatment in the Hospital and for that matter to obtain medical facilities, medical treatment book shouldbe provided to all workmen, but as a matter of fact no such medical treatment book was provided to him in spite of his appeal and the same was issued only after his dismissal from service i.e. on 14th October 1999 which he received on 16th October 1999 after hisdischarge from Psychiatry Ward. Further allegation of the second party is that one of the conditions of employment being that the management shall allot quarters to the 2nd party workman in their township, yet no such quarters was allotted in his favour and the 2nd party was staying with his father, who was an employee of Raw Materials Division. It has been specifically pleaded by the second party that on being suffered from vanous ailments he remained on leave from 1st January 1998 to 28th February 1998; from 26th July 1998 to 31th July 1998 and from 4th August 1998. It is stated that on 11th August 1998 the second party having

joined duty when applied for extra ordinary leave for the aforesaid period, the same was disallowed with a remark that no medical certificate has been enclosed to the application to prove the self-sickness of the second party and again on his application for sanction of extra ordinary leave for the period he was intimated that chargesheet, dated the 7th October 1998 has already been served on him covering the extra ordinary leave period. According to the second party, being ignorant about the procedure he could not submit reply to the charge sheet.It is alleged that taking advantage of his innocence the first party constituted an enquiry committee on 29th January 1999 and despite his presence in the said enquiry on 26th February 1999 the enquiry was adjourned at the instance of the. prayer of the Presenting Officer with an instruction to him to appear on 9th March 1999 or else the enquiry would proceed to *ex parte*. It is stated that on 9th March 1999 the second party could not appear due to his sickness.; as a result, the enquiry was conducted *ex parte*. It is alleged that the enquiry was conducted in a hot haste without affording him a reasonable opportunity in his defence and further the enquiry officer being biased has submitted his report basing on which he has been removed from service. Challenging the action of the management in removing him from service w.e.f. the 12th October 1999 to be illegal and unjustified, the second party has prayed for his reinstatement in service with all consequential benefits.

3. Pursuant to the notice, the 1st party-management in its written statement has stated that the reference is misconceived, devoid of merit and not maintainable. It is stated that the 2nd party workman while working as Shunting Porter in Traffic and Raw Materials Department remained absent from duty without sanction of leave for 117 days at different spells during 1st January 98 to 28th August 1998 which amounts to misconduct and for that the 2nd party workman as served with a charge sheet dated 7th October 1998 under the provision of the certified standing Orders of the Company. As the 2nd party workman through received the charge sheet did not submit any explanation, an enquiry committee was constituted to enquire into the charges leveled against him. Then enquiry committee conducted the enquiry and submitted its report holding the charges as established against the 2nd party-workman.Thoughcopy of.the enquiry proceeding and findings were communicated to the workman, he did not file any representation. Therefore, the disciplinary authority after considering the evidence on record; the findings of the enquiry committee; the connected documents and the fact that earlier he was suspended from duty without wages for 3 days on three different occasions vide order dated the 7th August 1995, 7th June 1996 and 23th October 1997 and was imposed with punishment of reduction of pay to lower stage twice vide order dated the 30th August 1997 and 29th July 1998 and there were adverse entries in his C.C.R for several years due to poor/ indifferent attendance, decided to impose the punishment of removal on the second party as a disciplinary measure. It is stated that as general nature of reference was pending before this Tribunal in I.D.Case No. 07 of 1997 in which the second party was a concerned workman, an application under Section 33-2(b) of the Act was filed seeking approval of the action taken by the management which was ultimately approved by this Tribunal vide order dated 9th August 2001. It is the specific averment of the management that the second party had never applied for leave on his joining and despite clear instruction that for his non-appearance the enquiry would be conducted *ex parte*, he neither entered appearance on the date fixed for enquiry nor intimated anything regarding his non-appearance and all the pleas advanced by the second party in this besides being imaginary and afterthought deserve no consideration at all. In the aforesaid background, the management prays to answer the reference in its favour.

4. Upon consideration of the rival contention of the parties, following issues have been settled for adjudication.

ISSUES

(i) Whether the reference is maintainable ?

(*ii)* Whether the domestic enquiry conducted by the management is fair and proper ?

(iii) Whether the removal from service of Shri S.C. Jamudalia, PL. No. 931324, Shunting porter, Yard Switching Section of Traffic and Raw Materials Department of Rourkela Steel Plant by the management with the effect from 12th October 1999 is legal and justified ?

(iv) if not, what relief Shri Jamudalia is entitled to ?

5. In course of hearing the 2nd party-workman examined himself as WW1 and placed reliance on documents which have been marked as Exts. 1 to Ext. 9. On the other hand and the first party examined two witnesses on its behalf as MW1 and MW2 and relied on documents marked Exts. A to Ext. G.

FINDINGS

6. *Issue No. (i)* —At the instance of the management an issue regarding maintainability of the reference has been framed, but no argument is advanced on this score satisfying the Tribunal as to on which ground the reference is not maintainable. On the other hand,as it revels from record, this is a reference made by the Government upon failure of the conciliation held between the parties by the Conciliation officer *cum* Assistant Labour Officer Rourkela and later on after subjective satisfaction of the Government that there existed a dispute between the parties, the reference as in the schedule *supra* surfaced for adjudication by the Tribunal and in that view of the matter, the Tribunal being a creation of the Statute, it lacks jurisdiction to sit over the decision of the Govt., accordingly the reference in the present dispute is held to be maintainable in this forum.

The issue is answered accordingly.

7. *Issue No. (ii)* —This Issue relates to the fairness and propriety of the domestic enquiry conducted against the second party. In this connection, it is submitted on behalf of the management that the issue in question having been decided in an earlier proceeding in I.D. Mics. Case No. 41 of 1999 by the Tribunal, it is no more open to be decided in the present reference. Learned Counsel representing the Management drew attention of the Tribunal to the order passed by this Tribunal on 26th March 2014 and 10th September 2014 and contended that in view of the order passed on this issue, the fairness and propriety of the enquiry is not required to be adjudicated by the Tribunal again as the findings arrived at in a proceeding under Section 33 of the Act would operate as res judicata upon an industrial dispute raised under Section 10(1) of the Act.

Per contra, it is argued on behalf of the second party that the enquiry suffers from official bias, in as much as the enquiry officer without affording the second party proper opportunity to defend himself in the enquiry and without proper assessment of the evidence adduced on behalf of the management conducted the enquiry *ex parte* and arrived at an arbitrary; unfair and illegal finding, and as such the Issue can again be adjudicated by this Tribunal in the present reference, irrespective of the finding arrived at by this Tribunal on dated the 9th August 2001 in I.D Mics. No. 41 of 1999.

8. It is not in dispute that earlier this Tribunal in I.D. Mics. No. 41 of 1999 (a proceeding under Section 33(2)(b) of I.D. Act) has already put its seal of approval to the order of removal

passed against the second party and the Tribunal on a petition filed by the management has already arrived at a finding on 26th March 2014 holding the domestic enquiry to be fair and proper in the instant proceeding. Further the record reveals that being dissatisfied with the orders passed on 26th March 2014 the second party has approached this Tribunal on 6th August 2014 seeking review of the order, dated the 26th March 2014 and on rejection of the said prayer, the matter was carried to the Hon'ble Court in W.P.(C) No. 12174 of 2017 and while disposing of the said Writ Application the Hon 'ble Court Vide Order, dated the 22th February 2024 have held as follows:—

"XX XX XX XX XX

2. Petitioner has filed this application seeking to quash the order dated the 26th March 2014 passed by the Learned Presiding Officer, Industrial Tribunal, Rourkela in I.D. Case No. 14 of 2006 and to direct the Learned Presiding Officer, Industrial Tribunal to adjudicated the reference according to the provision of the I.D. Act.

3. Learned counsel for the petitioner contended that against an interlocutory order dated the 26th March 2014, the petitioner has approached this Court by filing the present writ petition, even though the case is pending for adjudication before the Tribunal.

4. Mr. Nanda, learned senior advocate appearing for the opposite party management contended that since the case is pending for adjudication, it is open for the petitioner to raise such objection as has been raised in the present writ petition which shall considered and disposed of in the appropriate forum where the matter is pending for final disposal.

5. In such view of the matter, this Court without expressing any opinion on the merit of the case, dispose of the writ petition granting liberty to the petitioner to raise such objection as has been raised in this writ petition before the Tribunal in the pending I.D. Case."

Keeping in View the orders of the Hon'ble Court as referred to *supra* and so also the legalproposition as settled by the Hon'ble Apex Court in the Case of John D Souza *Vs* Karnatak State Road Transport Corporation, reported in AIRONLINE 2019 SC 1202, this Tribunal is of the opinion that despite approval is accorded on an Application under Section 33(2) (b) of the Act, still the Tribunal is empowered to adjudicate the issue relating to fairness and propriety to domestic enquiry, if raised in a reference under Section 10 (1) (c) and (d) of the Act. It would be profitable to refer to the observations of the Hon'ble Apex Court as in the Case of John D Souza(*Supra*), which is to the following effect :—

"XX XX XX XX XX

25. The labour Court/Tribunal, nevertheless, while holding enquiry under Section 33(2)(b), would remember that such like summary proceeding are not akin and at par with its jurisdiction to adjudicate an 'industrial dispute' under Section 10 (1) (c) and (d) of the Act, nor the former provision cloth it with the power to peep into the quantum of punishment for which it has to revert back to Section 11 A of the Act. Where the Labour Court/Tribunal, thus, do not find the domestic enquiry defective and the principle of fair and just play have been adhered to, they will accord the necessary approval to the action taken by the employer, albeit without prejudice to the right of the workman to raise an 'industrial dispute' referable for adjudication under Section 10(1) (c) or (d), as the case may be. It needs pertinent mention that an order of approval granted under Section 33(2)(b) has no binding effect in the proceedings under Section 10(1) (c) and (d) which shall be decided independently while weighing the material adduced by the parties before the Labour Court/Tribunal."

(emphasis supplied by this Tribunal)

9. The above being the position of law, now it is to be seen from the materials available on record as to if the second party is able to establish its stand taken with regard to the unfairness and impropriety of the domestic enquiry conducted against him by the first party, even if approval to the action of the management has already been given by this Tribunal basing on the findings of the said domestic enquiry.

Challenging the enquiry, it is the definite stand of the second party that he participated on the first date of enquiry which was fixed to the 26th February 1999 with a prayer for adjournment on the ground that he would attend the enquiry on the next date to be fixed along with a co worker, accordingly the enquiry was fixed to the 9th March 1999. But, on the adjourned date he could not appear due to his illness and on 12th March 1999 when he wanted to know the fate of the enquiry, the Enquiry Officer told him that the enquiry was over on 9th march 1999 in his absence. The *ex parte* enquiry is thus challenged by the second party on the ground that without affording reasonable opportunity to defend himself against the charges and without following the principle of natural justice the enquiry was conducted in an arbitrary and unfair manner. To sustain the argument on this score the Tribunal on scrutiny could not be able to find out the enquiry proceeding file on record to examine the alleged shortcomings pointed out by the second party to arrive at a conclusion. The record even does not disclose that in order to prove the unfairness and impropriety of the domestic enquiry the second party had called for the domestic enquiry file from the possession of the management, nor certified copies thereof have been produced for perusal by this Tribunal. No evidence is also adduced on behalf of the second party as to how he was prejudiced in the enquiry when he admittedly did not turn up on the date fixed for enquiry i.e. 9th March 1999, nor did he seek adjournment of the enquiry on the ground of his illness. In absence of materials to presume any prejudice to have been caused to the second party in the conduct of the enquiry, it is not possible for the Tribunal to hold the domestic enquiry to be either unfair or improper, particularly when the evidence in chief of MW No. 1 at Paras. 3 and 4, which are based on record and relates to the conduct of the enquiry, has not been shaken by the second party in any manner,

The issues is, therefore, answered accordingly.

10. *Issue No. (iii) & (iv)*— For the sake of convenience, both the issues are taken up for consideration as those relate to the legality and justifiability of the order of removal passed against the second party and the relief to which he is entitled.

In the context, while the management supports the action of the Disciplinary Authority in the matter of imposition of punishment on the second party and contends that the punishment imposed on the second party being in consonance with the materials available on record; the finding of the enquiry and the antecedents of the second party and therefore, needs no interference, the learned counsel representing the second party contends with reference to the working atmosphere of the Second Party that owing to the nature of job of second party, he has suffered a lot inasmuch as he met with two accidents in course of his employment within a span of ten months and on each and every occasion he had intimated his immediate authority for his absence from duty on account of sickness, but the management without taking into consideration his genuine difficulties imposed on him the major punishment of removal basing on the finding of an *ex parte* enquiry. The second party assails the action of the disciplinary authority on the following grounds:-

(i) That, the second party was not provided with a copy of the Certified Standing Orders; Medical Treatment Book and residential quarters and those short comings though pointed out to the disciplinary authority, yet the same were not taken into consideration.

(ii) That, the Assistant General Manager IIC Traffic and Raw Materials Department not being bestowed with the powers of the Disciplinary Authority has imposed the punishment of removal on the second party, which is not sustainable in the eye of law.

The rival contentions of the parties need a careful examination of the oral as well as the documentary evidence available on record and upon consideration of the procedure for dealing with cases of misconduct as set out in the Certified Standing Orders of the Company. In the case in hand, the second party has been imposed with a major penalty i.e. removal from service. Clause 30 (ii) of the Certified Standing Orders of the Company lays down the procedure for imposition of major penalties, which runs as follows :—

(ii) Procedure for imposition of major penalties :—

(a) Where an employee is charged with an offence which may lead to the imposition of major penalty, he shall be informed in writing of the allegations against him and shall be given an opportunity to make representation within a period of not less than 7 days. On receipt of the employee's explanation, where the allegations are denied by him, an enquiry shall be held by an Officer or Officers nominated by the management. Such enquiry will be conducted by an Officer other than the Officer who has either reported the alleged misconduct or has issued the charge sheet or is directly subordinate to him. At the enquiry the employee concerned shall be afforded reasonable opportunity of explaining and defending his action with the assistance of a fellow employee.....

(b) xx xx xx xx xx xx

(c) xx xx xx xx xx xx

(d) xx xx xx xx xx xx

(e) xx xx xx xx xx xx

(f) No order of removal or dismissal from service shall be made by an authority lower than the apponinting authority of the employee. In awarding the punishment the management shall take into account the gravity of the misconduct, the previous record of the workman and any extenuating or aggravating circumstances that may exist. A copy of each of the orders passed by the management shall be supplied to the workman concerned."

MW 1 in his evidence in chief at Para. 5 has deposed that the Disciplinary Authority after perusal of the enquiry proceedings and findings as well as the connected documents thereof was satisfied that the second party was guilty of the charges leveled against him vide charge sheet, dated the 7th October 1999 and came to the conclusion that the second party deserves to be removed from the services of the Company as a disciplinary measure as it was found that being a habitual absentee the second party was imposed with minor as well as major punishments on different occasions in the past vide orders, dated the 7th August 1995, 7th June1996, 23rd October 1997, 30th August 1997 and 29th July 1998 (Ext. A series) for his remaining absent from duty. It also reveals from the evidence of MW 2 that note sheets, dated the 21st July 1995, 17th May 1996 and 12nd August 1997 (Exts. B, B/1 and B/2, respectively) clearly reflect that the punishments were imposed on him in the past and he had acknowledged the same. It further reveals from his evidence that Ext.C, the Letter, dated the 18th July 1997 would reflect that the second party was issued with proceeding and findings of the enquiry relating to the punishment of reduction of his basic pay vide order, dated the 30th August 1997. Though MW 1 and MW 2 have been cross examined at length, yet nothing substantial brought out in their evidence to demolish the documentary evidence as discussed above.

However, challenge is made to the action of the Disciplinary Authority on the ground that the management was obliged to supply him a copy of the Certified Standing Orders of the Company and despite demand when a copy thereof was not furnished to him he could not able to reply to the charge sheet. Clause 41 of the Standing Orders stipulates that "a copy of these Standing Orders in English, Hindi and Oriya shall be pasted on the main notice boards and shall be kept in legible condition. A copy of these Standing Orders shall be s upplied to each workman free of cost on demand. In this context, the evidence of the second party in cross examination may be referred to wherein he has stated that he was not supplied with the Standing Orders of the Company but at the same time he could not say as to if the extract of the Standing Orders of the Company has been displayed in various places inside the Plant premises in thre languages. No document is produced from the side of the second party showing that despite his demand the management did not provide him a copy of the Certified Standing Orders. In absence of any demand for supplying him a copy of the Certified Standing Orders of the Company, the stand of the second party that he was prejudiced in any manner in the proceeding is not sustainable.

11. Further, the second party has urged that he was not provided with Medical Treatment Book which could have revealed his ailments during employment. Nothing reveals from record that the second party had at any time applied for such a document from the management. To the suggestion of the management the second party has denied that the medical book was not supplied to him as he had not applied for the same. At Para. 23 of his cross examination he has admitted that there is a hospital namely, Ispat General Hospital available to cater to the medical need of employees of RSP, Rourkela and their dependants free of cost; it has got a provision of about 500 indoor patient's bed; the hospital is having specialized Doctors and in the event of better treatment the patients are also referred to the higher medical institutions where the treatments are made free of cost. On the face of the above evidence, I am not convinced with the argument that in absence of Medical Treatment Book the second party was prejudiced in any manner. No reason is assigned as to why the second party despite medical facility available at his door step was being treated for his ailment outside. Further, in view of candid admission of the second party at Para. 24 of his cross-examination that he was not allotted with Company's quarters but in lieu thereof he was getting house rent allowance, I find no substance in the argument that for non-allotment of a Quarters in his favour he had suffered any prejudice in the departmental proceeding.

12. Next, it is contended on behalf of the second party that in view of the stipulations contained in the Certified Standing Orders of the Company, the Assistant General Manager, IIC, Traffic & Raw Materials Division) is not empowered to impose punishment on him and in the instant proceeding the removal order having been passed by a lower authority than the Appointing Authority, the same is not sustainable in the eye of law. To fortify his argument, learned counsel representing the second party cited decisions of the Hon'ble Apex Court in the cases of Delhi Transport Union *vs* B.B.L. Hajeley, reported in AIR 1971 SC 11and R.K. Nair *Vs*. General Manager, Bhillai Steel Plant, Bhillai, reported in 1977 (II) LLN 79; referred to the order of appointment of the second party (Ext.1) which was issued by the Deputy Manager(Personnel), Recruitment and contended that the order of punishment being in the hands of Assistant General Manager, IIC, Traffic & Raw Materials Department, there is an infraction of the provision of the Certified Standing Orders and thus is liable to be quashed by the Tribunal. True it is, that as per sub-Clause-(f) of Clause 30 of the Certified Standing Orders, no order of removal or dismissal from service shall be made by an authority lower than the appointing authority of the employee, but at the same time it is found from the documentary evidence and the testimony of MW 2 that as per Ext. E, delegation of

disciplinary power i.e. imposition of major penalty of discharge/removal/dismissal was vested with the Chief Superintendent, but at a later stage i.e. vide Personnel Policy Circular No. 665 dated the 28th July 1993 (Ext. F) the Chief Superintendent, consequent upon his re-designation as "Assistant General manager", became the competent authority to impose punishment of discharge/removal/ dismissal on an employee and on a conjoint reading of the above documents, it becomes clear that the Assistant General Manager, by virtue of Ext. F, was competent enough to decide the punishment to be imposed on an employee in case of a proved misconduct and in that view of the matter the decisions referred to by the second party on this score are found to be of no help to the second party.

13. Next, it is contended on behalf of the second party that the punishment of removal imposed on the second party is too harsh looking to the misconduct i.e. absenteeism of the second party from duty and the same being as a consequence of his illness the Disciplinary Authority ought to have taken the same into consideration and a minor penalty should have been imposed on the second party. Advancing such an argument, it is submitted on behalf of the second party that taking into consideration the fact that absenteeism of the second party was on account of his sickness a lenient view in the matter may be taken in exercise of powers vested with the Tribunal under Section 11-A of the Act. The learned counsel representing the management, on the other hand, opposing to the move of the second party contended that the second party is a habitual absentee and he is in habit of remaining unauthorisedly absent from duty not only covering the period for which he was charge sheeted, but also on previous occasions and any leniency, if considered in his favour, would amount to perturb the discipline of the industry and so also the work efficiency of others.

In the wake of the submissions as above, I think it appropriate, to refer to a decision of the Hon'ble Apex Court in the Case of M/s L&T Komatsu Ltd. *vs* N. Udayakumar, reported in 2008 (1) SCC 224, wherein their Lordships have quoted with approval the observations made by the Hon'ble Apex Court in the Case of Mahindra and Mahindra Ltd, *V.* N.B . Narawade [2005(3) SCC 134] which is to the following effect :

> "It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11 A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment. xx xx."

In the light of the observations of the Hon 'ble Apex Court, on a thorough scrutiny of the evidence, both oral and documentary, it is found that evidence is plenty with regard to the second party's absenteeism from duty on various occasions, may it be for his ailment or other reasons,

but the fact remains on all such occasions his absence being found to be unauthorized he was given some punishments by the management. Even in the present proceeding, it is deposed to by the second party in his cross examination at Para. 28 that the documents filed by him under Exts. 2, 3 and 6 series are not relating to the period of his absence as mentioned in the charge sheet dated the 7th October 1998. He has also failed to justify that he had ever submitted the applications under Exts. 4, 5 and 8 to the management. On the face of the past conduct of the second party there absolutely exist no extenuating circumstances in favour of the second party for consideration in exercise of powers conferred upon the Tribunal under Section 11-A of the Act in the matter of punishment of removal imposed on the second party by the management.

In view of the discussions held in the preceding paragraphs, the action of the management in removing the second party from service w.e.f. the 12th October 1999 is found to be neither illegal nor unjustified and consequently the second party is held entitled to no relief in the present proceeding.

The issues are answered accordingly.

Dictated and corrected by me.

BENUDHAR PATRA
13-01-2025
Presiding Officer
Industrial Tribunal,
Rourkala.

BENUDHAR PATRA
13-01-2025
Presiding Officer
Industrial Tribunal,
Rourkala.

[No. 1503—LESI-IR-ID-0013/2025-LESI]

By order of the Governor

MADHUMITA NAYAK

Additional Secretary to Government

Printed and Published by the Director, Directorate of Printing, Stationery and Publication, Odisha, Cuttack-10
Ex. Gaz. 2214–173+98p